

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1158 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

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BASIRBHAI HUSENBHAI SHAIKH

Versus

CHIMANBHAI PARSHOTTAMBHAI PATEL  
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Appearance:

MR NS DESAI for Petitioners  
None present for Respondents  
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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 24/03/2000

CAV JUDGEMENT

#. Heard learned counsel for the petitioner.

#. Under the impugned order dated 27/7/99 passed by Civil Judge (S.D.), Nadiad in the Special Civil Suit No.366/88 the application filed by the defendants-petitioners for grant of them permission to examine suit document by the handwriting expert and to examine hand writing expert was came to be rejected.

#. The plaintiffs-respondents filed suit for recovery of Rs.8,34,000/= against the defendants-petitioners. This amount is stated to be the amount of the rent of Tractor No. : GJU 7311 along with the trolly No. GTJ 1363 with blades, which were rented out to the defendants-petitioners under the agreement dated 7/1/93 by the plaintiff-respondent. The learned counsel for the petitioner relying on the judgment of Rajasthan High Court, Orissa High Court and two judgments of this court and the judgment of the Hon'ble Supreme Court contended that this application of the defendants-petitioners for examining the handwriting expert should have been granted as a matter of course and rule.

#. I do not find any merits in this contention. Each case has to be decided on its own facts. The learned trial court has not committed any material irregularity in exercise of its jurisdiction in passing the impugned order. It is not the law or the rule that merely on asking of the defendant for examining handwriting expert the application has to be accepted. The learned trial court has given out just and cogent reason not to allow this application of the petitioners. This suit has been filed in the year 1988. The suit documents were executed on 7/1/83 and the documents were produced. It is referred in the plaint. The written statement has been filed in the year 1988 and this application has been filed by the defendants-petitioners on 17/7/1999 i.e. after more than 11 years of the possession of the suit. In case, the defendants-petitioners wanted to get this document examined by the handwriting expert that could have been made clear long back. The delay in approaching in the matter by the defendants-petitioners with this request is not explained. The learned court below is correct in its approach to hold that the application given by the defendants-petitioners is not in good faith. There is no perversity in the approach of the learned trial court that the purpose of making of this application appears to delay in the proceedings of the suit. The document is a basis of the suit and the defendants-petitioners are aware of the same since long. They have replied the plaint and rightly the learned Trial court observed that the application for examination

of hand writing expert should have been given in the year 1988 itself. Otherwise also, in case this order is allowed to stand it will not occasion any failure of justice and will not cause any injury to the defendants-petitioners. This is only interlocutory order and the defendants-petitioners have all the right to challenge its legality, propriety and correctness in the case of their failure in suit in the regular appeal to be filed against the judgment and decree of the Trial court.

#. In the result, this revision application fails and the same is dismissed. Whatever the observations and findings, which are recorded in this order / judgment are to be taken only for the purpose of deciding this revision application. The decision may not be taken to be as if the court has confirmed the order of the learned Trial Court on merits. In case, the defendants-petitioners challenge this order in the regular appeal to be filed on their failure in the suit, the First Appellate court is free to examine the legality and correctness of this order.

(S.K.Keshote, J.)

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